

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
10

11 JORGE ARVIZU, individually and as
12 successor-in-interest to KRYSTAL LEE
ARVIZU aka KRYSTAL LEE CHURCH,

13 Plaintiff,

14 v.

15 CITY OF FRESNO, a Municipal entity;
16 FRANCIS HAMMON, an individual;
17 ANTHONY ALVARADO, an individual;
and DOES 1-5, inclusive,

18 Defendants.
19

No. 1:21-cv-00890-NODJ-SKO

ORDER GRANTING LEAVE TO AMEND

(Doc. 33)

20 On January 8, 2024, the parties filed a stipulation (Doc. 33), presumably pursuant to Fed.
21 R. Civ. P. 41(a)(1)(A)(ii), to dismiss Plaintiff's second cause of action for municipal liability under
22 *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658 (1978) without
23 prejudice. (Doc. 33). However, Rule 41 does not permit dismissal of part of the claims against a
24 party. *United States v. Hill*, No. 2:17-CV-608-MCE-EFB, 2020 WL 5502327, at *2 (E.D. Cal. Sept.
25 11, 2020), *report and recommendation adopted*, No. 2:17-CV-00608 MCE EFB, 2020 WL
26 6158232 (E.D. Cal. Oct. 21, 2020) ("Rule 41 does not permit a party to dismiss some but not all of
27 its claims. Instead, a party is required to seek leave of the court to amend the complaint to eliminate
28 one or more, but less than all, of its claims under Rule 15."). *See also Hells Canyon Pres. Council*

1 v. *U.S. Forest Serv.*, 403 F.3d 683, 687-88 (9th Cir. 2005) (affirming the district court by construing
2 the Rule 41 dismissal as granting leave to amend to remove the claims in question); *Ethridge v.*
3 *Harbor House Rest.*, 861 F.2d 1389, 1392 (9th Cir. 1988). Thus, the Court construes the parties'
4 stipulation as an unopposed motion seeking leave to amend under Rule 15. Given that leave should
5 be freely given, and that the parties stipulated to removing the claim, the Court GRANTS leave to
6 amend.

7 Although the Court approves the parties' stipulation as it relates to the filing of an amended
8 pleading, for the purposes of docket management, operative pleadings must be filed on the docket
9 separately. Thus, Plaintiff must file their Second Amended Complaint on or before February 9,
10 2024. The Court will not deem it filed without action by the Plaintiff.

11
12 IT IS SO ORDERED.

13 Dated: **January 9, 2024**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE